

National Welfare Rights Network Inc

**Submission to the Senate Education, Employment and
Workplace Relations Committee Inquiry into the DEEWR
tender process to award employment service contracts**

3 June 2009

About the National Welfare Rights Network

The National Welfare Rights Network (NWRN) is a network of 14 community legal centres throughout Australia which specializes in Social Security law and its administration by Centrelink. Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, and advocates for reforms to law, policy and administrative practice.

NWRN member organisations provide casework assistance to their clients in the form of information, advice, referral and representation. NWRN member organisations also conduct training and education for community workers and produce publications to help Social Security recipients and community organisations understand the system and maximise their clients' entitlements.

1. General Comments

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide feedback on a range of issues related to the recent tender into the award of contracts for the delivery of employment services by the Department of Education, Employment and Workplace Relations.

The focus of our comments relate primarily to the impact of the new arrangements on job seekers, and particularly vulnerable job seekers, with the aim of ensuring that all unemployed people have the opportunity to access high quality support and assistance through Job Services Australia.

NWRN supports the intention behind the reformed model of employment services, which promises a greater focus on the needs of marginalized and disadvantaged job seekers. The focus is desirable, necessary and long overdue. It is our view that it is vitally important for the Committee to deliver a report that increases the capacity of unemployed people to benefit from an efficient, effective and responsive employment services system. NWRN consider that if there are significant changes to the employment services model that vulnerable job seekers and those experiencing long term unemployment will be the biggest losers if the current focus on the most disadvantaged job seekers is reduced or diminished in any way.

The current inquiry offers an opportunity to make additional refinements to the current arrangements which are designed to improve workforce participation. The inquiry also provides the opportunity for important lessons to be learned which should be factored into future tender processes for employment and related services (such as the upcoming tender for Disability Employment Services and that for Job Capacity Assessments).

Various employment service providers (including those who have newly entered the market or increased or lost capacity to deliver employment services in the 2009 tender) are most appropriately placed to comment on specific Terms of Reference related to the contracts undertaken by the Department of Education, Employment and Workplace Relations (DEEWR). Our comments on these aspects of the inquiry are necessarily limited and relate to the conduct and process of the tender, as opposed to probity issues.

The context for NWRN's comments to this Inquiry are grounded in the casework experience of our member centres across Australia who work closely with job seekers, particularly those who are vulnerable or marginalized. Our member centres engagement with employment service providers has increased, as a

direct result of changed Government policies over the past decade including the contracting out of employment services, the expansion of activity requirements and the significant financial penalties that can result for job seekers who fail to meet their obligations.

The scope of and actual numbers of people subject to these activity requirements and their interaction with employment service providers has increased as a result of successive initiatives including *Australian's Working Together* and *Welfare to Work*. This interaction brings with it through the penalty system an unprecedented potential to impact on the level of income that is there to meet essential living expenses and thereby maintain a reasonable standard of living.

Unfortunately from NWRN experience the use of the penalty system has too often been used by Employment Services Providers as a method to contact and engage with jobseekers. The use of a system of penalties to engage with clients is counterproductive. It is particularly unhelpful for clients who are apprehensive about their engagement with job network members and for those who may experience difficulties associated with their various vulnerabilities.

At a broader policy level, over the past few years NWRN has seen a substantial increase in the level of engagement and consultation by Government including DEEWR with our Network and other key stakeholders. Our engagement has included consultation with DEEWR on the 'No Show No Pay' aspects of the new compliance arrangements, the changes to the Social Security Guide and the associated Disallowable Instruments behind the legislation. NWRN has also provided DEEWR with extensive feedback on the content of key Centrelink factsheets for job seekers about the new employment services arrangements. We were also invited by the Minister to be a member of the Participation Taskforce, whose recommendations were largely adopted by the Government in the recent Budget.

The following comments are made in response to the Inquiry's Terms of Reference.

2. The conduct of the 2009 tendering process by the Department of Education, Employment and Workplace Relations to award Employment Service contacts, with particular attention to:

- (i) the design of the tender, including the weighting given to past performance and the weighting given to the 'value for money' delivered by previous and new service providers.**

Weighting of past performance and star ratings

Whilst NWRN is not convinced about the merits of tendering out 100 per cent of the business of job network providers, we do recognise that the new system – in collapsing seven programs into one – represents a strategic and fundamental re-orientation of the entire delivery of support for, funding of and the level of assistance for Australia's job seekers.

NWRN members deal with a wide range of employment service providers from the large for profit, not for profit and smaller, specialist services. In hindsight, the weighting for past performance – at just 30% - has led to some unintended and possibly unfortunate outcomes for existing providers. This has been particularly so for some smaller specialist services who work with extremely vulnerable client groups who have lost contracts. From our members' experience we are at a loss to understand this outcome as in the past these organisations have excelled in star ratings and in other aspects of their service delivery to many vulnerable job seekers.

The selection criteria left providers with considerable scope for interpretation (or misinterpretation) about the weight that should have been given to particular selection criteria and the weightings assigned to particular sub-criteria in the tender. Smaller agencies that delivered effectively to job seekers but lacked the capacity and resources to effectively "sell" their services in written submissions may have been placed at a particular disadvantage in the tender process. This has been the flavour of anecdotal feedback to member centres.

New market entrants from overseas

A significant amount of commentary on the outcomes of the tender process has related to the percentage of market share that has been obtained by international operators. Comments have focused on the "percentage" of services that have been gained by these interests in the proposed Job Services Australia.

NWRN believes that the capacity to deliver positive outcomes for job seekers should be paramount in the award of employment service contracts to both local and international operators. It should thus be the experience, skill set, ability to meet tender requirements including performance indicators and the capacity to successfully meet the new, re-focused arrangements which must be taken into account with respect to which operators should have been awarded contracts under the tender. The nationality or country of origin of the employment services operators is immaterial (as long as there are no labour market exploitation issues relevant to the successful company's overseas operations).

There is much to be learned from the international experience in supporting job seekers in a range of circumstances and in providing innovative and flexible services for job

seekers. Indeed, arguably greater diversity and experience in the delivery of assistance to job seekers could be beneficial to both providers and users of employment services. We note also that Australian agencies have a long and proven track record of providing employment services to job seekers outside of Australia. NWRN consider that it is the ability to deliver on the ground which counts.

- (ii) evaluation of the tenders submitted against the selection criteria, including the relationship between recent service performance evaluations in various existing programs (such as provider star ratings), selection criteria and tendering outcomes, and**

NWRN has no comment on this issue.

- (iii) the extent to which the recommendations of the 2002 Productivity Commission report into employment services have been implemented.**

NWRN has no comment on this issue.

3. The level of change of service providers and proportion of job seekers required to change providers, and the impacts of this disruption in communities with high levels of unemployment or facing significant increases in unemployment

We are not in a position to provide information about the numbers of job seekers who will be required to change providers as a result of the recent tender process. However the numbers are likely to be significant. Previous experience informs us that when major changes take place to the job network arrangements unemployed people faced difficulties with the transition, support was inconsistent and penalty numbers surged.

The process of change will be problematic and difficult for many job seekers. All efforts should be expended to ensure that there is minimal disruption for job seekers during the transition phase so that unemployed people do not end up being the casualties as the new system ramps up. NWRN expects that providers who have contracts until 1 July 2009 will continue to provide the level and quality of support to job seekers as required by their contracts.

We also note that this major change will also coincide with the introduction of a new Social Security penalty system from 1 July 2009. The new system is an improvement on the one it replaces, and has some positive features. Notwithstanding the improvements, the unprecedented level of complexity within the new compliance system will pose significant challenges for providers,

Centrelink and of course, job seekers. Especially during the transition phase, job seekers will be at significant risk of failing to meet their obligations and being subject to penalty arrangements.

The Government should direct employment service providers to take a firm, but realistic and flexible approach to the strict enforcement of compliance requirements until job seekers are better informed about the new arrangements, and until service providers are in a position to gain the trust of new job seekers and build effective relationships with local communities and local businesses. This approach is needed to arrest the current situation whereby the rate of participation failures recommended by employment service providers per week at about 14,000 has reached historical levels but where Centrelink rejects over 60% once it independently assesses the evidence and situation of the job seeker.

NWRN appreciates the diligence of Centrelink in this regard, but remains anxious that the new system will see a spike in penalty numbers, as job seekers take time to understand the complexities and intricacies of the new arrangements. It is of significant concern that employment services seem to rely too heavily upon the compliance arrangements to get job seekers “through the door”. A better and more positive way of engagement must be found.

4. Any differences between the recommendations of the Tender Assessment Panel and the announcement of the Minister for Employment Participation of successful tenders on 2 April.

Employment service providers are best placed to comment on this aspect of the Inquiry.

5. The transaction costs of this level of provider turnover, the time taken to establish and ‘bed-down’ new employment services, and the likely impacts of this disruption on both new and existing clients seeking support during a period of rapidly rising unemployment.

The underlying settings and architecture that the new employment services model was designed to address in terms of local labour market conditions, a profile of job seekers, skills shortages and deficits, and an economic environment fundamentally different from the conditions which existed before the advent of the Global Financial Crisis (GFC). The unforeseen impacts of the GFC has inevitably led to a revision of policy in some areas which have significant implications for large numbers of job seekers, their families and communities.

We believe that the Government has been responsive to the changed environment and the need to change both policy settings and the levels of assistance to job seekers. A number of welcome and positive changes have been made, which has included a change to the Liquid Assets Waiting Period (LAWP) and earlier access to a greater range of support for newly retrenched job seekers. NWRN championed these reforms, which were sensible and long overdue. Whilst both of these measures are seen as temporary responses to the GFC, and are to be reviewed before 2011, NWRN is strongly of the view that these reforms should remain permanent features of the system. These changes should have been priorities for reform, with or without the GFC.

6. Communication by the Department to successful and unsuccessful tenderers, the communications protocol employed during the probity period, and referrals to employment services by Centrelink during the transition period.

Employment service providers are best placed to comment on this aspect of the Inquiry. NWRN notes, however, that the media comment both prior to and post the announcement by the Department of successful and unsuccessful tenderers caused significant stress and anxiety to some job seekers.

7. The extent to which the Government has kept its promise that Personal Support Program, Job Placement Employment and Training and Community Work Co-ordinator providers would not be disadvantaged in the process, and the number of smaller 'specialist' employment service providers delivering more client-focused services still supported by the Employment Services Program

We are unable to comment specifically on this matter other than to note that in many respects the success or otherwise of the new employment services system rests on whether the special needs of this group is adequately met. The adage that one can judge a society by how it treats its most vulnerable members is very true in this area of policy.

If this support for the most vulnerable is found wanting then community support for and confidence in the new system will be significantly, and perhaps irrevocably compromised. This is because the Government has spent the entire year after the new arrangements were initially flagged talking up the new focus on long-term vulnerable and marginalized job seekers. The language adopted from "work first" to "work ready" personified the fundamental shift in focus to differentiate the new system from the failed rigidities in the one that it replaced.

If the promised support and assistance for vulnerable job seekers falls short of what is required the Government should take immediate action to rectify the deficiencies that are indentified in this Inquiry.

NWRN welcomes the current focus of minimising, wherever possible, any disruption to vulnerable job seekers, particularly those in the Personal Support Program (PSP) and Jobs, Placement, Employment and Training (JPET). NWRN would be extremely concerned if the transition process for these groups is poorly handled. The requirement of a face to face handover interview should hopefully reduce clients' anxiety around the change in provider. The limited options for job seekers to exercise choice in providers are positive and DEEWR should make information available about the use of this option, as well as information about complaints from job seekers about the transition period.

8. The particular impact of Indigenous Employment Service providers and Indigenous-focused Employment Service providers

The impact on Indigenous job seekers will be substantial as most will have to be re-routed to new providers. Many will be untested in terms of delivery of culturally sensitive services fro Indigenous job seekers. Planned changes to the Community Development Employment Program (CDEP) which begin from 1 July 2009 which will see around 5,000 Indigenous job seekers "transitioning" to mainstream employment service providers will pose significant challenges for both providers and job seekers alike.

NWRN provided a submission and gave evidence to the recent Senate Inquiry into the CDEP changes but the majority report whilst acknowledging the potential for negative consequences for Indigenous job seekers and their communities argue for the changes to proceed without amendment. This very risk course of action is likely to have damaging consequences for affected individuals and communities. Careful monitoring will be essential to ensure the delivery of services is culturally accessible and appropriate and to make sure that Indigenous job seekers and their communities are not disproportionately impacted by Social Security penalties when the new arrangements commence from 1 July 2009.

9. The Employment Model, including whether it is sustainable in a climate of low employment growth and rising unemployment, and whether there is capacity to revise it in the face of changed economic circumstances

The arrival of the GFC has created a new and urgent responsibility upon Government to make the necessary modifications to the employment services

framework to ensure that those job seekers who are the most marginalized and disadvantaged are in a position to take advantage of the opportunities which will arise when the recovery arrives. Extra support for job seekers in streams 3 and 4 who face considerable barriers to employment is a welcome recognition of the level of disadvantage faced by this group as a whole.

Access to training and education, through the recently announced initiatives, and the new training supplement of \$21 a week are welcome and positive reforms. But the road to employment for disadvantaged job seekers has become increasingly difficult as they are at greater risk of being overtaken by those newly unemployed, with recent workforce experience and skills and experience that (will soon) be much in demand.

A major problem that the system will confront is how to respond to disadvantaged job seekers whose circumstances have not substantially improved after accessing Stream 4 services. NWRN supports proposals by not for profit (and other) employment service providers for the introduction of a new, more intensive stream of support for job seekers with significant non-vocational barriers to employment.

The current economic downturn and the re-vamped system of employment services from 1 July provides a unique opportunity to focus on the rights of unemployed people to access support and assistance to achieve and not just on their responsibilities. If unemployed people are properly engaged and supported it is a win-win situation for everyone. The challenge of the new system will be to foster and improve engagement and participation. The new employment services system will only be successful if the system focuses on the rights, needs and expectations of job seekers, and what they can expect in terms of supports and assistance from employment service providers.

A system that focuses exclusively on obligations and requirements, and fails to deliver on the expectation of mutual support and assistance, is not conducive to assisting unemployed to utilise the opportunities provided in the new arrangements to reach their full potential. Under the current economic conditions, the Government should review whether, it is still reasonable to require that job seekers must generally look for 10 jobs a fortnight. Engagement that is devoid of purpose and costly is ultimately counter-productive. For the same reasons, we also recommend a more realistic application of activity requirements for the duration of the GFC.

10. Recommendations for the best way to maintain an appropriate level of continuity of service and ongoing sector viability while at the same time ensuring service quality and accountability and maximizing the ancillary benefits for social inclusion through connection and integration with other services.

One particular concern that has been raised by a significant number of not for profit and community based employment service providers is that the loss of contracts or reductions in the size of contracts under the recent tender will result in less ability to use surplus funds from their employment services arm to subsidise other programs of support and assistance for vulnerable people. It is argued that long established programs which provide unique support at a local level to meet unmet need will no longer be viable. The effect of which will be that the delivery of diverse, multi-faceted and innovative programs will be made more difficult at a time when the current financial situation is reducing their capacity to obtain funds through corporate and community fund raising activities, notwithstanding demand for assistance continues to grow significantly.

Charities who use employment services surplus revenue rightly point out that the failure of Government to acknowledge the reality of how they cross subsidise services for the vulnerable highlights the 'siloed' outlook of the Government in the support of vulnerable Australians. The exposure given to the employment service tender process has brought a welcome focus on the difficulties faced by many community organisations.

Whilst we recognise the valuable contribution and 'wrap around' support, NWRN believes that any surpluses from employment services should generally be returned to programs for unemployed people. The Government should fund these services in order to deliver programs to support its social inclusion agenda and should not expect their delivery to be funded by the siphoning off of funds for employment services.